

Chapter 8: Felony Offenses in the Michigan Penal Code

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This chapter contains an overview of felony traffic offenses found in the Michigan Penal Code. The discussion of each offense contains the following elements where relevant:

- The name of the offense.
- The text of the statute creating the offense.
- A summary of the elements of the offense.
- Criminal penalties.
- Licensing sanctions.
- Issues of importance to deciding cases involving the offense.
- Related misdemeanors

On attempted offenses, see Section 7.1 of this volume.

8.1 Involuntary Manslaughter with a Motor Vehicle

A. Statute

MCL 750.321 states:

“Manslaughter — Any person who shall commit the crime of manslaughter shall be guilty of a felony punishable by imprisonment in the state prison, not more than 15 years or by fine of not more than 7,500 dollars, or both, at the discretion of the court.”

Only the penalty for this offense is set forth in the statute; the definition of the crime is found in case law.

Note: MCL 750.325 provides that the two-year misdemeanor offense of negligent homicide is included within every crime of manslaughter charged to have been committed in the operation of

a vehicle. In any case where a defendant is charged with manslaughter committed in the operation of a vehicle, the jury may render a verdict of guilty of negligent homicide if it finds the defendant not guilty of manslaughter. See Section 9.2 of this volume for a discussion of negligent homicide with a motor vehicle.

B. Elements of the Offense

CJI2d 16.12 sets forth the elements of involuntary manslaughter with a motor vehicle as follows:

1. Defendant operated a motor vehicle on or about [date], at [place];
2. Defendant operated the motor vehicle in a grossly negligent manner;
3. Defendant's gross negligence was a substantial cause of an accident resulting in injuries to another person; and
4. The injuries caused the death of the other person.

When defendant is *charged* with involuntary manslaughter with a motor vehicle, both CJI2d 16.12 and CJI2d 16.14 (Negligent Homicide) must be given. See MCL 750.325 and Section 9.2 of this volume.

C. Criminal Penalties

MCL 750.321 provides the following penalties for manslaughter:

- imprisonment for not more than 15 years; or
- fine of not more than \$7,500.00; or
- both.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(a) and MCL 257.732(4)(c).
2. Revocation of defendant's license is mandatory. MCL 257.303(5)(e).
3. Revocation of defendant's license by the Secretary of State also occurs when a defendant has any combination of two or more convictions within seven years for involuntary manslaughter with a vehicle and any of the motor vehicle felonies listed at MCL 257.303(5)(b).

4. Upon posting of an abstract that an individual has been found guilty of involuntary manslaughter with a vehicle, the Secretary of State shall assess a \$1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(i). See Section 6.4(B) of this volume for more information about driver responsibility fees.

E. Issues

Murder is reduced to involuntary manslaughter if the defendant did not intend to kill or did not knowingly create a very high risk of death, but instead acted with unreasonable disregard for life (gross negligence). Gross negligence means more than carelessness. It means willfully disregarding the results to others that might follow from the act or failure to act. In *People v Orr*, 243 Mich 300, 307 (1928), the Michigan Supreme Court set forth three necessary elements that must be found:

1. Knowledge of a situation requiring the exercise of ordinary care and diligence to avert injury to another.
2. Ability to avoid the resulting harm by ordinary care and diligence in the use of the means at hand.
3. The omission to use such care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another.

The defendant's grossly negligent conduct must be a proximate cause (not the *only* cause) of the accident. *People v Tims*, 449 Mich 83, 96 (1995).

MCL 750.325 does not entitle a defendant charged with second-degree murder to a jury instruction on negligent homicide. *People v Weeder*, 469 Mich 493, 498 (2004). In *Weeder*, the defendant was charged with second-degree murder following an auto-related death. The trial court refused to instruct the jury on negligent homicide and the jury convicted the defendant of involuntary manslaughter. *Weeder, supra* at 495-96. The Michigan Supreme Court disagreed with the defendant's assertion that MCL 750.325 required that the jury be permitted to consider convicting him of negligent homicide where he was charged with second-degree murder but convicted of involuntary manslaughter. *Weeder, supra* at 498.

Notwithstanding the propriety of the trial court's determination that the evidence did not support giving the jury a negligent homicide instruction (a question to be resolved by the Court of Appeals on remand), the Supreme Court emphasized that the plain and unambiguous language of MCL 750.325 clearly indicates that the statute applies only when a defendant is charged with manslaughter. *Weeder, supra* at 497-99. Because the defendant in *Weeder* was not charged with manslaughter, MCL 750.325 did not apply, and defendant was not entitled to an instruction on negligent homicide on that basis. *Weeder, supra* at 498.

A person may be charged with and convicted of MCL 750.321 for each death arising out of the same criminal transaction, and a court may impose consecutive sentences upon conviction. MCL 769.36(1)(b).

8.2 OWI or OWVI Resulting in Miscarriage, Stillbirth, Death, or Serious Injury

A. Statute

MCL 750.90d states:

“A person who engages in conduct proscribed under section 625(1) or (3) of the Michigan vehicle code, [MCL 257.625(1) or (3)], that involves an accident with a pregnant individual is guilty of a felony punishable as follows:

“(a) If the person’s conduct causes a miscarriage or stillbirth by that individual or death to the embryo or fetus, imprisonment for not more than 15 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

“(b) If the person’s conduct causes great bodily harm or serious or aggravated injury to the embryo or fetus, imprisonment for not more than 5 years or a fine of not less than 1,000.00 or more than \$5,000.00, or both.”

B. Elements of the Offense

1. At the time of the incident, the defendant was violating Vehicle Code §625(1) or (3) (operating a motor vehicle while under the influence of intoxicating liquor or a controlled substance, with an unlawful bodily alcohol content, or while visibly impaired).

2. The accident involved a pregnant woman.

3. The defendant’s conduct caused a miscarriage, a stillbirth, death to the embryo or fetus, great bodily harm to the embryo or fetus, or serious or aggravated injury to the embryo or fetus.

Offenses under Vehicle Code §625(1) and (3) are addressed in Sections 3.1 and 3.3 of this volume.

C. Criminal Penalties

If the defendant's conduct caused a miscarriage, stillbirth, or death to the embryo or fetus, MCL 750.90d(a) provides the following penalties:

- imprisonment for not more than 15 years; or
- fine of not less than \$2,500.00 or more than \$10,000.00; or
- both.

If the defendant's conduct caused great bodily harm or serious or aggravated injury to the embryo or fetus, MCL 750.90d(b) provides the following penalties:

- imprisonment for not more than five years; or
- fine of not less than \$1,000.00 or more than \$5,000.00; or
- both.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(a) and MCL 257.732(9).

2. Suspension of the defendant's license is mandatory for a period of one year. MCL 257.319(2)(d).

3. Revocation of defendant's license by the Secretary of State occurs when a defendant has any combination of two or more convictions within seven years for this offense and any of the motor vehicle felonies listed at MCL 257.303(5)(b).

4. Upon posting of an abstract that an individual has been found guilty of this offense, the Secretary of State shall assess a \$1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(i). See Section 6.4(B) of this volume for more information about driver responsibility fees.

8.3 Unlawful Driving Away an Automobile*

*Also referred to as "UDAA."

A. Statute

MCL 750.413 states:

"Taking possession of and driving away a motor vehicle--Any person who shall, wilfully and without authority, take possession of and drive or take away, and any person who shall assist in or be a party to such taking possession, driving or taking away of any

motor vehicle, belonging to another, shall be guilty of a felony, punishable by imprisonment in the state prison for not more than 5 years.”

B. Elements of the Offense

CJI2d 24.1 sets forth the elements of this offense as follows:

1. The vehicle belonged to someone else.
2. The defendant took possession of the vehicle and [drove / took] it away.
3. These acts were both done [without authority / without the owner’s permission].
4. The defendant intended to take possession of the vehicle and [drive / take] it away. It does not matter whether the defendant intended to keep the vehicle.

“[A]ny person who shall assist in or be a party to such” a crime shall also be guilty of a felony. MCL 750.413. See also CJI2d 24.1(6).

C. Criminal Penalties

MCL 750.413 imposes a term of imprisonment of not more than five years.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(a) and MCL 257.732(4)(a).
2. Suspension of defendant’s license is mandatory under statute for a period of one year. MCL 257.319(2)(b).
3. Revocation of defendant’s license by the Secretary of State occurs when a defendant has any combination of two or more convictions within seven years for this offense and any of the motor vehicle felonies listed at MCL 257.303(5)(b).
4. Upon posting of an abstract that an individual has been found guilty of this offense, the Secretary of State shall assess a \$1,000.00 driver responsibility fee for two consecutive years. MCL 257.732a(2)(a)(i). See Section 6.4(B) of this volume for more information about driver responsibility fees.

E. Issues

“[A] specific intent to take possession unlawfully of the vehicle is a necessary ingredient of the [felony offense] The intent to do only the required

physical act . . . the taking or driving away of the motor vehicle without authority . . . would therefore be insufficient.” *People v Lerma*, 66 Mich App 566, 570, 571 (1976).

“[U]nlawful driving away an automobile does not require proof of an intent to permanently deprive the owner of his property and is therefore not larceny . . . In cases involving the taking of an automobile, the prosecution will often charge unlawfully driving away a motor vehicle in lieu of larceny so as to dispense with the need to prove ‘intent to steal.’” *People v Goodchild*, 68 Mich App 226, 233 (1976).

The issue of whether a vehicle is a “motor vehicle” is a question of law to be decided by the court. *People v Shipp*, 68 Mich App 452, 454–55 (1976) (a motorcycle found to be a “motor vehicle”). See MCL 750.412 (definition of “motor vehicle”).

A person who has possession of an automobile as a bailee cannot violate §413 because that person already has lawful possession. *Landon v Titan Ins Co*, 251 Mich App 633, 641 (2002). In *Landon*, plaintiff was held to be a bailee of an automobile when the owner of the automobile, in an attempt to sell it, left it for display in plaintiff’s yard with the keys in it, with the understanding that plaintiff would give the keys to potential buyers to take test drives. Plaintiff’s later use of the automobile, even if unauthorized, did not violate §413. *Landon*, *supra* at 641-43.

This offense is sometimes called “UDAA” and is sometimes called “joyriding.” *Mester v State Farm Mutual Ins Co*, 235 Mich App 84, 88 (1999), and *People v Hayward*, 127 Mich App 50, 63 (1983). However, the latter term is problematic because the misdemeanor offense described in MCL 750.414 is also sometimes referred to as “joyriding.” *Priesman v Meridian Mut Ins Co*, 441 Mich 60, 70 (1992) (Griffin, J, dissenting).

Unlawful use of an automobile, MCL 750.414, is a necessarily lesser-included offense of unlawfully driving away an automobile. *People v Crosby*, 82 Mich App 1, 3 (1978).

F. Related Two-Year Misdemeanor

Unlawful use of an automobile without intent to steal is a two-year misdemeanor under MCL 750.414.* The Court of Appeals has distinguished unlawful driving away an automobile from unlawful use of an automobile without intent to steal as follows:

“The distinction between the two offenses is that [the felony offense] requires the defendant to take possession of the motor vehicle without the owner’s permission, while the [two-year] misdemeanor offense of unlawful use of a motor vehicle is committed when an individual, who has been given lawful possession of a motor vehicle, uses it beyond the authority which

*Section 9.3 of this volume addresses the two-year misdemeanor offense of unlawful use of an automobile without intent to steal.

has been granted to him by the owner.” *Hayward, supra* at 61. See also CJI2d 24.4.

Note: Although the *Hayward* court lists lawful possession as one of the elements of unlawful use of an automobile, that element is not found in the statute, and the *Crosby* court specifically notes that “[l]awful possession is not an element of the offense of unlawful use of an automobile.” *Crosby, supra* at 4.

8.4 Malicious Destruction of Trees, Shrubs, Plants, or Soil with a Motor Vehicle

A. Overview of the Statutory Scheme

Misdemeanor and felony penalties are provided for any person who with a vehicle “willfully and maliciously, or wantonly and without cause, cuts down, destroys, or injures any tree, shrub, grass, turf, plants, crops, or soil of another that is standing, growing, or located on the land of another.” MCL 750.382(1). Licensing suspensions are imposed by the Secretary of State immediately upon receiving a record of the person’s conviction for one of the crimes in this statute, whether the conviction is under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state. MCL 257.319(1). The nature of the penalty and length of the license suspension depends upon the value of the property destroyed.

If the value of the property destroyed or injured is **less than \$200.00**, the defendant is subject to **misdemeanor** penalties consisting of imprisonment for not more than 93 days or a fine of not more than \$500.00 or three times the value of the property, whichever is greater, or both imprisonment and a fine. MCL 750.382(1)(a). The Secretary of State shall suspend the defendant’s license for 30 days. MCL 257.319(4).

Enhanced Penalty: If the defendant violates MCL 750.382(1)(a), and has one or more prior convictions for committing or attempting to commit an offense under that section or a substantially corresponding local ordinance, the penalties are enhanced. In these cases, the defendant is subject to **misdemeanor** penalties consisting of imprisonment for not more than one year or a fine of not more than \$2,000.00 or three times the value of the property, whichever is greater, or both imprisonment and a fine. MCL 750.382(1)(b)(ii). The Secretary of State shall suspend the defendant’s license for 90 days. MCL 257.319(3)(c).

If the value of the property destroyed or injured is **\$200.00 or more but less than \$1,000.00**, the defendant is subject to **misdemeanor** penalties consisting of imprisonment for not more than one year or a fine of not more than \$2,000.00 or three times the value of the property, whichever is greater, or

both imprisonment and a fine. MCL 750.382(1)(b)(i). The Secretary of State shall suspend the defendant's license for 90 days. MCL 257.319(3)(c).

Enhanced Felony Penalty: If the defendant violates MCL 750.382(1)(b)(i), and has one or more prior convictions* for committing or attempting to commit an offense under that section or a substantially corresponding local ordinance, the penalties are enhanced. In these cases, the defendant is subject to **felony** penalties consisting of imprisonment for not more than five years or a fine of not more than \$10,000.00 or three times the value of the property, whichever is greater, or both imprisonment and a fine. MCL 750.382(1)(c)(ii). The Secretary of State shall suspend the defendant's license for 90 days. MCL 257.319(3)(c).

*A "prior conviction" does not include a conviction for a violation or attempted violation of MCL 750.382(1)(a) or (b)(ii).

If the value of the property destroyed or injured is **\$1,000.00 or more but less than \$20,000.00**, the defendant is subject to **felony** penalties consisting of imprisonment for not more than five years or a fine of not more than \$10,000.00 or three times the value of the property, whichever is greater, or both imprisonment and a fine. MCL 750.382(1)(c)(i). The Secretary of State shall suspend the defendant's license for 90 days. MCL 257.319(3)(c).

Enhanced Felony Penalty: If the defendant violates MCL 750.382(1)(c)(i), and has two or more prior convictions* for committing or attempting to commit an offense under that section or a substantially corresponding local ordinance, the penalties are enhanced. In these cases, the defendant is subject to **felony** penalties consisting of imprisonment for not more than ten years or a fine of not more than \$15,000.00 or three times the value of the property, whichever is greater, or both imprisonment and a fine. MCL 750.382(1)(d)(ii). The Secretary of State shall suspend the defendant's license for 90 days. MCL 257.319(3)(c).

*A "prior conviction" does not include a conviction for a violation or attempted violation of MCL 750.382(1)(a) or (b)(ii).

If the value of the property destroyed or injured is **\$20,000.00 or more**, the defendant is subject to **felony** penalties consisting of imprisonment for not more than ten years or a fine of not more than \$15,000.00 or three times the value of the property, whichever is greater, or both imprisonment and a fine. MCL 750.382(1)(d)(i). The Secretary of State shall suspend the defendant's license for 90 days. MCL 257.319(3)(c).

B. Statute – Felony Provisions

MCL 750.382(1)(c) and (d) provide for felony penalties, as follows:

“(1) A person who willfully and maliciously, or wantonly and without cause, cuts down, destroys, or injures any tree, shrub, grass, turf, plants, crops, or soil of another that is standing, growing, or located on the land of another is guilty of a crime as follows:

* * *

“(c) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the value of the trees, shrubs, grass, turf, plants, crops, or soil, whichever is greater, or both imprisonment and a fine:

“(i) The value of the trees, shrubs, grass, turf, plants, crops, or soil cut down, destroyed, or injured is \$1,000.00 or more but less than \$20,000.00.

“(ii) The person violates subdivision (b)(i) and has 1 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a) or (b)(ii).”

“(d) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the value of the trees, shrubs, grass, turf, plants, crops, or soil, whichever is greater, or both imprisonment and a fine:

“(i) The value of the trees, shrubs, grass, turf, plants, crops, or soil cut down, destroyed, or injured is \$20,000.00 or more.

“(ii) The person violates subdivision (c)(i) and has 2 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a) or (b)(ii).”

*Subdivision (b)(i) involves destruction of property valued at \$200.00 or more but less than \$1,000.00. Subdivisions (a) and (b)(ii) involve destruction of property valued at less than \$200.00 and that repeat offense.

C. Elements of the Felony Offense

1. Defendant cut down, destroyed, or injured a tree, shrubs, grass, turf, plants, crops, or soil of another person that was standing, growing, or located on the land of that other person;
2. Defendant did so with a motor vehicle;
3. At that time, defendant acted wilfully and maliciously, or wantonly and without cause; and
4. The value of the tree, shrubs, grass, turf, plants, crops, or soil was greater than \$1,000.00, or

5. The value of the tree, shrubs, grass, turf, plants, crops, or soil is \$200.00 or more but less than \$1,000.00, and the defendant has one or more qualifying convictions of violations or attempted violations of MCL 750.382, or

6. The value of the tree, shrubs, grass, turf, plants, crops, or soil is \$1,000.00, or more but less than \$20,000.00, and the defendant has two or more qualifying convictions of violations or attempted violations of MCL 750.382.

D. Felony Penalties

If the defendant was convicted of violating subsection (c), the following penalties apply:

- imprisonment for not more than five years; or
- fine of not more than \$10,000.00 or three times the value of the trees, shrubs, grass, turf, plants, crops, or soil, whichever is greater; or
- both imprisonment and a fine.

If the defendant was convicted of violating subsection (d), the following penalties apply:

- imprisonment for not more than ten years; or
- fine of not more than \$15,000.00 or three times the value of the trees, shrubs, grass, turf, plants, crops, or soil, whichever is greater; or
- both imprisonment and a fine.

E. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(a) and MCL 257.732(9).

2. The Secretary of State must suspend the defendant's driver's license for 90 days following a conviction of either subsection (c) or (d). MCL 257.319(3)(c).

3. Revocation of defendant's license by the Secretary of State occurs when a defendant has any combination of two or more convictions within seven years for this offense and any of the motor vehicle felonies listed at MCL 257.303(5)(b).

4. Upon posting of an abstract that an individual has been found guilty of this offense, the Secretary of State shall assess a \$1,000.00 driver responsibility

fee for two consecutive years. MCL 257.732a(2)(a)(i). See Section 6.4(B) of this volume for more information about driver responsibility fees.

F. Issues

For the offenses under this statute, the value of property destroyed or injured in separate incidents pursuant to a scheme or course of conduct within any 12 month period may be aggregated to determine the total value. MCL 750.382(3).

Procedures in cases involving an enhanced sentence are set forth in MCL 750.382(4). The prosecutor must include a list of any prior convictions on the complaint and information. The court must determine the existence of any prior convictions without a jury, at sentencing, or at a separate hearing for that purpose before sentencing. Any relevant evidence may be used to establish the prior conviction, including one or more of the following (without limitation):

- A copy of the judgment of conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

MCL 750.382(5) provides that prior convictions used to obtain an enhanced sentence as described above may not be used to further enhance the sentence under MCL 769.10, 769.11, 769.12.